



Revision number:

Purchasing Agent: JARED GARDNER

**Item: COMPUTERS-MANUFACTURER DIRECT (WSCA)- Energy Star Compliant**

Vendor: 10696C Apple Computer, Inc.  
1 Infinite Loop, M/S 38-3CM  
Cupertino, CA 95014

Internet Homepage:

<http://store.apple.com/AppleStore/WebObjects/K12Custom?qprm=141519>

Telephone: (801) 779-1401

Fax number: (801) 779-1407

Contact: Brad Caldwell

Brand/trade name: Apple

Price: See Web Site for current pricing

Terms: NET 30

Effective dates: 12/21/04 through 08/31/07

Days required for delivery: 10-14 days after receipt of order

Price guarantee: Percent discount off Commercial List Price

Minimum order: One

Shipping and Handling: Included

Other conditions: None

Contract renewal options: Potential renewals through 08/31/09

Two (2) One (1) year terms

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**New contract**

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This is a multiple award contract. Please review the following contracts for optimal pricing, delivery and service before making your purchasing decision: **MA-1137 (Dell)**, **MA-575 (Gateway)**, **MA-432 (HP)** and **MA-130 (IBM)**, and **MA-1817 (MPC-G)**. Document purchasing decision.

This contract covers only those items listed in the price schedule. It is the responsibility of the agency to ensure that other items purchased are invoiced separately. State agencies will place orders directly with the vendor (creating a PG in Finet) and make payments for the same on a PV referencing the original PG. Agencies will return to the vendor any invoice which reflects incorrect pricing.

**Remit To:** Vendor # 10696C D Apple Computer  
P.O. Box 846095  
Dallas, TX  
75284-6095



## **ORDERING AND PRICING**

<http://store.apple.com/AppleStore/WebObjects/K12Custom?qprm=141519>

## **CONTRACT INFORMATION**

The Master Price Agreement number A63306 and State contract Number MA-1813 **must** be shown on all purchase orders issued against this contract.

This agreement is NOT for the purchase of major, large hardware or hardware and software offerings. In general, individual units/configurations should not exceed \$50,000.00 each. However, this does not limit how many items or the total dollar limit on any given purchase.

## **CONTACT LIST**

### **STATE AND LOCAL GOVERNMENTS**

Attn: State and Local Government Sales Support  
12545 Riata Vista Circle  
Austin, TX 78727  
Phone: 1-800- Go Apple  
FAX: (512) 674-2992

### **PUBLIC EDUCATION**

via Fax or Mail send your k-12 Education order to:  
Apple Computer  
Attn: K-12 Education Sales Support  
12545 Riata Vista Circle  
Austin, TX 78727  
Phone: 1-800-800-2775  
Fax: (512) 674-2992

### **HIGHER EDUCATION**

via Fax or Mail send your k-12 Education order to:  
Apple Computer  
Attn: Higher Education Sales Support  
12545 Riata Vista Circle  
Austin, TX 78727  
Phone: 1-800-800-2775  
Fax: (512) 674-2992

### **SOFTWARE NEEDS**

PC stores contracts please see: MA-362, MA-371, MA-1448, and MA-1449

### **FINET COMMODITY CODE(S):**

20413000000 Cables: Printer, Disk, Network, Etc.  
20416000000 Chips: Accelerator, Graphics, Math Co-processor, Memory (Ram and Rom),  
Network, Etc.  
20419000000 Communication Boards: Fax, Modem (Internal), Etc.  
20424000000 Controllers, Programmable: Industrial Control Devices, Robots, Etc.  
20428000000 Data Entry and Remote Job Entry Devices, Voice Activated: Voice Recognition,  
Voice Digitization, Speech Synthesizers, Etc.  
20433000000 Drives, Compact Disk (Cd Rom, Etc.)



20434000000 Drives, Floppy Disk  
20435000000 Drives, Hard/fixed Disk  
20437000000 Drives, Tape  
20442000000 Expansion/accelerator Boards: Memory, Processor, Etc.  
20453000000 Microcomputers, Desktop or Towerbased  
20454000000 Microcomputers, Handheld, Laptop, and Notebook  
20455000000 Microcomputers, Multi-processor  
20458000000 Modems, External, Data Communications  
20460000000 Monitors, Color and Monochrome (Cga, Vga, Svcga, Etc.)  
20464000000 Network Components: Adapter Cards, Bridges, Connectors,  
ExpansionModules/ports, Hubs, Line Drivers, Msas, Routers, Transceivers,etc  
20468000000 Peripherals, Miscellaneous: Joy Sticks, Graphic Digitizers, Light Pens, Mice, Pen  
Pads, Trackballs, Etc.  
20484000000 Retrieval Systems, Computer Assisted: Indexing, Retrieval (Cd Rom Jukebox, Etc.)  
And Access Systems

## PARTICIPATING ADDENDUM

### COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS AND RELATED SERVICES

#### MASTER PRICE AGREEMENT

Apple Computer, Inc.

Contract Number A63306

#### STATE OF UTAH

UTAH CONTRACT NUMBER MA-1813

**1. Scope**

This Participating Addendum ("Addendum") is for the furnishing of supplies, services, and equipment to the State of Utah government departments, institutions, agencies and political subdivisions (ie, universities, colleges, counties, cities, towns, school districts, special service districts, and other Participating Entities as defined in the Master Price Agreement)

**2. Changes:**

The following clauses are to be added:

**1. AUTHORITY:** Provisions of this Addendum are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases for the STATE.

**2. LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.

**3. AMENDMENTS:** The terms of this Addendum will not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the State Director of Purchasing.

**4. DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the STATE.

**5. CANCELLATION:** This Addendum may be canceled by either party without cause upon 60 days notice, in writing, prior to the effective date of the cancellation. Cancellation may be in whole or in part. Cancellation of the Addendum due to default by either party may be immediate.

**6. TAXES:** The State of Utah and its political subdivisions are exempt from paying sales and use tax. The State of Utah's sales and use tax exemption number is E33399. The State of Utah's Federal excise exemption number is 87-780019K

**7. REPORTS AND FEES:** The Contractor will submit quarterly reports to the State Purchasing Agent showing the quantities and dollar volume of purchases by each

agency and political subdivision. The report shall be accompanied by a check payable to Utah Division of Purchasing for an amount equal to 0.0010 of the gross Utah sales for the quarterly period.

**8. PAYMENT:** A Participating Entity shall be invoiced upon shipment of Products and, provided the Participating Entity is qualified for credit with Contractor, payment of such invoice will be due no later than thirty (30) days from date of invoice. Payments may be made via a State of Utah (or political subdivision) "Purchasing Card". All payments to the Contractor will be remitted by mail unless paid by Purchasing Card.

**9. PUBLIC INFORMATION:** Contractor agrees that this Addendum and the Master Price Agreement are public document, as far as distribution of copies, and Contractor gives the STATE express permission to make copies of the Master Price Agreement and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, or copyright information.

**10. ADDITIONAL SERVICES:** Professional services purchased by the Customer must be related to and/or associated with the purchase of the product pursuant to this Addendum.

**11. LEASE AGREEMENTS:** Leasing is not an option under this agreement.

**12. INDIVIDUAL CUSTOMERS:** Each State agency and each political subdivision, as a State Entity, that uses this will be treated as if they were individual Customers. Each agency and each political subdivision will be responsible for their own charges, fees, and liabilities. The Contractor will apply the charges to each State Entity individually.

**3. Primary Contact:**

The primary participating entity contact for this participating addendum is as follows:

**Name:** Jared Gardner C.P.M., Purchasing Agent

**Participating Entity Name:** State of Utah

**Address:** 3150 State Office Building, Salt Lake City, UT 84114

**Telephone:** 801.538.3026

**Fax:** 801.538.3882

**E-mail:** [jaredgardner@utah.gov](mailto:jaredgardner@utah.gov)

The primary Contractor contact for this participating addendum is as follows:

**Name:** Stephen Glaros

**Contractor:** Apple Computer, Inc.

**Address:** 1 Infinite Loop, M/S 38-3CM, Cupertino, CA 95014

**Telephone:** 408.974.0756

**Fax:** 408.974.4908

**E-mail:** [sglaros@apple.com](mailto:sglaros@apple.com)

**4. Servicing Subcontractors:**

The Contractor, at this time, will not be using subcontractors to provide any products or services.

**The Master Price Agreement Number MUST be shown on all Purchase Orders**

issued against this Agreement.

This Addendum and the Master Price Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Master Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by Contractor below.

Entity Name: State of Utah

Contractor: Apple Computer, Inc.

By: 

By: 

Name: DOUGLAS RICHINS

Name: PRESTON PATTON

Title: DIRECTOR OF PURCHASING

Title: Senior Manager

Date: NOV 24 2004

Date: 11/2/04

# WESTERN STATES CONTRACTING ALLIANCE

## MASTER PRICE AGREEMENT

for

COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS, AND RELATED SERVICES

APPLE COMPUTER, INC.

Number A63306

This Agreement is made and entered into by Apple Computer, Inc., 1 Infinite Loop, 38-3CM, Cupertino, CA, 95014, ("Contractor") and the Department of Administration ("State") on behalf of the State of Minnesota, participating members of the National Association of State Procurement officials (NASPO), members of the Western States Contracting Alliance (WSCA) and other authorized Participating States and Participating Entities.

### RECITALS

**WHEREAS**, the State has the need to purchase and the Contractor desire to sell; and,

**WHEREAS**, the State has the authority to offer contracts to CPV members of the State of Minnesota and to other states.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the parties agree as follows:

### INTENT AND PURPOSE

The intent and purpose of this Agreement is to establish a contractual relationship with equipment manufacturers to provide, warrant, and offer maintenance services on **ALL** products proposed in their response to the RFP issued by the State of Minnesota. The Contractor may use subcontractors to provide the warranty and/or maintenance services; however the Contractor will be responsible for working with the equipment manufacturer on behalf of the Purchasing Entity and for the timeliness and quality of all services provided. No type of Lease transactions are allowed through this Agreement.

The Agreement is **NOT** for the purchase of major, large hardware or hardware and software offerings. In general, individual units/configurations should not exceed \$50,000 each. It is the expressed intent of some of the Participating States to set this level at not to exceed \$25,000 each. This **IS NOT** a restriction on how many units/configurations can be purchased, but on the value of each individual unit/configuration. Individual Participating States and Participating Entities may set specific limits in a participating addendum, with the prior approval of the WSCA Directors.

Contractors may offer, but participating states and entities do not have to accept, limited professional services related **ONLY** to the equipment and configuration of the equipment purchased through the Agreement.

#### 1. Definitions

**"Announced Promotional Price"** are prices offered nationally to specific categories of customers (Consumer, Business or government) for defined time periods under terms and conditions as predefined by the Contractor.

**"Contract"** means an agreement for the procurement of items of tangible personal property or services.

**"Contract Administrator"** means an individual appointed by the State to administer this Agreement on behalf of the State of Minnesota, the participating NASPO and WSCA members, and other authorized purchasers.

**"Contractor"** shall mean a successful Responder who enters into a binding Master Price Agreement. The Contractor is responsible for all sales, support, warranty, and maintenance services for the products included in this Agreement. The Contractor must manufacture or take direct, non-assignable, legal responsibility for the manufacture of the equipment and warranty thereof.

**"Consumables"** that are required for the operation of Equipment offered or supplied are included – printer cartridges, batteries, projector bulbs, etc. Consumables such as magnetic media, paper and generally available office supplies are excluded.

**"CPV Member"** is any governmental unit having independent policy making and appropriating authority, that is a member of Minnesota's Cooperative Purchasing Venture (CPV) program.

**"CPV Program"** The Cooperative Purchasing Venture (CPV) program, as established by Minn. Stat. § 16C.03, subd. 10, authorizes the Commissioner of Administration to "enter into a cooperative purchasing agreement for the provision of goods, services, and utilities with [governmental entities] ..., as described in section 471.59, subdivision 1." Based on this authority, the commissioner of Administration, through the Materials Management Division (MMD), enters into a joint powers agreement that designates MMD as the authorized purchasing agent for the governmental entity. It is not legal for governmental entities that are not members of the CPV program to purchase from a State contract. Vendors are free to respond to other solicitations with the same prices they offer under a contract, but that is not considered use of the "State contract price."

**"Cumulative Volume Discount"** means a contractual, cumulative, permanent volume discount based on dollars resulting from the cumulative purchases by all governmental purchasers for the duration of their Master Price Agreement. The State acknowledges that Contractor does not offer cumulative volume discounts under this Agreement.

**"Documentation"** refers to manuals, handbooks, and other publications listed in the PSS, or supplied with products listed in the PSS, or supplied in connection with services. Documentation may be provided on magnetic media or may be downloaded from the Contractor's web site.

**"E-Rate"** is a program sponsored by the Federal Communications Commission whereby educational and other qualifying institutions may purchase authorized technology at reduced prices.

**"Educational Discount Price"** means the price as set forth on the applicable Authorized Apple Education Price List in effect on the date an education or state/local government customer's order is accepted by Apple.

**"Energy Star®"** is a voluntary energy efficiency program sponsored by the U.S. Environmental Protection Agency. The Energy Star program makes identification of energy efficient computers easy by labeling products that deliver the same or better performance as comparable models while using less energy and saving money. Energy Star qualified computers and monitors automatically power down to 15 watts or less when not in use and may actually last longer than conventional products because they spend a large portion of time in a low-power sleep mode. For additional information on the Energy Star program, including product specifications and a list of qualifying products, visit the Energy Star website at <http://www.energystar.gov>.

**"Equipment"** means workstations, desktop, laptop (includes Tablet PC's), and handheld (PDA) devices, servers, computing hardware, including upgrade components such as memory, storage drives, and spare parts.

**"FCC"** means the Federal Communications Commission or successor federal agency. In the event of deregulation, this term applies to one or more state regulatory agencies or other governing bodies charged to perform the same, or similar, role.

**"General Price Reduction Price"** means the price offered to consumer, business or governmental purchaser at prices lower than PSS pricing. General price reduction prices will be reflected in the PSS as soon as practical.

**"ISO 14001"** is the conformance standard within the family of ISO 14000 documents developed by the International Organization for Standardization (ISO) in Geneva, Switzerland. Similar in structure to the ISO 9000 quality management system standard, ISO 14001 outlines key requirements companies should comply with in order to operate in an environmentally responsible manner. Utilizing ISO 14001, companies can merge environmental programs into one coherent system to efficiently manage all environmental activities. In short, ISO 14001 provides organizations with a way to demonstrate to their customers that their environmental processes and impact are effectively managed, continually improving, and part of the corporate management system. For more information, please refer to [www.iso.org](http://www.iso.org).



**"Lead State"** means the State conducting this cooperative solicitation and centrally administering any resulting Master Price Agreement(s). For this solicitation, the Lead State is Minnesota.

**"Mandatory"** The terms "must" and "shall" identify a mandatory item or factor.

**"Manufacturer"** means the company that designs, assembles, and markets computer equipment including workstations, desktop computers, laptop (includes Tablet PC's) computers, handheld (PDA) devices, servers, printers, and storage solutions/auxiliary storage devices. The manufacturer's name(s) shall appear on the computer equipment. The Contractor shall provide warranty service and maintenance for equipment covered by this Agreement as well as a Takeback Program.

**"Master Price Agreement"** means the contract that MMD will approve that contains the foundation terms and conditions for the acquisition of Contractor's products and/or services by Purchasing Entities. The "master price agreement" is a permissive price agreement. In order for a Purchasing Entity to participate in a Master Price Agreement, the appropriate state procurement official or other designated procurement official must be a Participating State or Participating Entity.

**"Materials Management Division" or "MMD"** means the procurement official for the State of Minnesota or a designated representative.

**"NASPO"** means the National Association of State Procurement Officials

**"Participating Addendum"** means a bilateral agreement executed by the Contractor and a Participating State or political subdivision of a State that clarifies the operation of the price agreement for the State or political subdivision concerned, e.g. ordering procedures specific to a State or political subdivision and other specific language or other requirements. Terms and conditions contained in a Participating Addendum shall take precedence over the corresponding terms in the master price agreement. Additional terms and conditions may be added via the Participating Addendum. However, a Participating Addendum may not alter the scope of this Agreement or any other Participating Addendum. ***Unless otherwise specified, the Participating Addendum shall renew consecutively with the Master Price Agreement.*** One physically or digitally signed copy of each Participating Addendum shall be filed by the Contractor with the Contract Administrator within five (5) days after execution.

**"Participating State" or "Participating Entity"** means a member of NASPO (Participating State) or a political subdivision of a NASPO member (Participating Entity) who has indicated its intent to participate by signing an Intent to Participate, or who subsequently signs a Participating Addendum where required, or another state or political subdivision of another state authorized by the WSCA Directors to be a party to the resulting Master Price Agreement through the execution of a participating addendum.

**"PDA"** means a Personal Digital Assistant. Refers to a wide variety of handheld and palm-size PCs, and electronic organizers. PDA's usually can store phone numbers, appointments, and to-do lists. PDA's can have a small keyboard, and/or have only a special pen that is used for input and output. The PDA can also have a wireless fax modem. Files can be created on a PDA which are later entered into a larger computer. **NOTE: For this Agreement, all Tablet PC's are NOT considered PDA's.**

**"Peripherals"** include but are not limited to storage, printers (including multifunction network print/fax/scanner/copying devices), scanners, monitors, keyboards, cameras (digital and video used in conjunction with computing equipment), projectors, uninterruptible power supplies and accessories. Adaptive/Assistive technology devices are included as well as configurations for education. Peripherals may be manufactured by a third party, however, Contractor shall not offer any peripherals manufactured by another contractor holding a Master Price Agreement without the prior approval of the Contract Administrator.

**"Per Transaction Multiple Unit Discount"** means a contractual volume discount based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Purchasing Entity or multiple entities conducting a cooperative purchase.

**"Political Subdivision"** means local public governmental subdivisions of a state, as defined by that state's statutes, including instrumentalities and institutions thereof. Political subdivisions include cities, counties, courts, public schools and institutions of higher education.

**"Price Agreement"** means an indefinite quantity contract that requires the Contractor to furnish products or services to a Purchasing Entity that issues a valid Purchase Order.

**"Procurement Manager"** means the person or designee authorized by MMD to manage the relationships with WSCA, NASPO, and Participating States/Participating Entities.

**"Product(s)"** means personal computer equipment, peripherals, LAN hardware Software, and Network Storage devices, but not unrelated services.

**"Products and Services Schedule Prices" or "PSS"** mean the maximum prices offered to Participating Entities exclusive of Announced Promotional Prices, Education Discount Prices, General Price Reductions, or Large Order Negotiated Prices. All such products and services shall be listed on the Contractor's web site accessible via a URL.

**"Purchase Order"** means an electronic or paper document issued by the Purchasing Entity that directs the Contractor to deliver Products or Services pursuant to a Price Agreement.

**"Purchasing Entity"** means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a Agreement for the purchase of goods described in this solicitation. Unless otherwise limited by statute, in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing Entities and authorized to purchase the goods and/or services described in this solicitation.

**"Services"** are broadly classed as installation/de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the Master Price Agreement. These types of services may include, but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/help desk, and any other directly related technical support service required for the effective operation of a product offered or supplied. General consulting and all forms of application development and programming services are excluded.

**"Servicing Subcontractor" or "Reseller Agent" or "Subcontractor"** means a Contractor authorized and state-approved subcontractor who may provide local marketing support or other authorized services on behalf of the Contractor in accordance with the terms and conditions of the Contractor's Master Price Agreement. A wholly owned subsidiary or other company providing warranty or other technical support services qualifies as a Servicing Subcontractor. Local business partners may qualify as Servicing Subcontractors. Servicing Subcontractors may not directly accept Purchase Orders or payments for Products or Services from Purchasing Entities, unless otherwise provided in a Participating Agreement. Servicing Subcontractors shall be named individually or by class in the Participating Addendum. The Contractor actually holding the Master Price Agreement shall be responsible for Servicing Subcontractor's providing warranty service and maintenance for equipment on a Master Price Agreement as well as the Take back Program.

**"Standard Configurations"** mean deeply discounted standard configurations that are available to Purchasing Entities using the Master Price Agreement only. This specification includes a commitment to maintain and upgrade (keep pace with the advance of technology) the standard configurations for a stated period of time or intervals.

**"State Procurement Official"** means the director of the central purchasing authority of a state.

**"Storage Solution/Auxiliary Storage"** means the technology and equipment used for storage of large amounts of data or information. This includes technologies such as: Network Attached Storage (NAS); Storage Area Networks (SAN); Content Addressed Storage (CAS); and/or Clustered Network Storage (CNS).

**"Takeback Program"** means the Contractor's process for accepting the return of the equipment or other products at the end of life.

**"Trade In"** refers to the exchange of used Equipment for new Equipment at a price reduced by the value of the used Equipment. For purposes of Contractor's Trade In program, used Equipment has zero value associated with it. Contractor does not offer any price reduction on new Equipment for Trade Ins.

**"Travel"** means expenses incurred by authorized personnel directly related to the performance of a Service. All such expenses shall be documented in a firm quotation for the Purchasing Entity prior to the issuance and acceptance of a Purchase Order. Travel expenses will be reimbursed in accordance with the purchasing entities allowances, if any, as outlined in the PA.

**"Universal Resource Locator" or "URL"** means a standardized addressing scheme for accessing hypertext documents and other services using the WWW browser.

**"WSCA"** means the Western States Contracting Alliance, a cooperative group contracting consortium for state procurement officials, representing departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming.

2. **Scope of Work**

The Contractor, or its approved subcontractor, shall accept purchase orders from and deliver computing system Products and services to Purchasing Entities in accordance with the terms of this Agreement. This Agreement is a "Master Price Agreement". Accordingly, the Contractor shall provide Products or Services only upon the issuance and acceptance by the Contractor of valid "Purchase Orders". Purchase Orders may be issued to purchase the license for software or to purchase products listed on the Contractor's PSS. A Purchasing Entity may purchase any quantity of Product or Service listed in the Contractor's PSS at the prices in accordance the Paragraph 13, Price Guarantees. Subcontractor participation is governed by the individual Participating State procurement official. The Contractor is required to provide warranty and maintenance services on equipment that is purchased. The Contractor shall offer a Takeback Program for all products covered by this Agreement.

3. **Title Passage**

The Contractor must pass unencumbered title to any and all products purchased under this Agreement upon receipt of the product by the Purchasing Entity. This obligation on the part of the Contractor to transfer all ownership rights does not apply to proprietary materials owned or licensed by the Contractor or its subsidiaries, subcontractors or licensor, or to unmodified commercial software that is available to the State on the open market. Ownership rights to such materials shall not be affected in any manner by this Agreement.

4. **Permissive Price Agreement and Quantity Guarantee**

This Agreement is not an exclusive agreement. Purchasing Entities may obtain computing system Products and services from other sources during the agreement term. The State of Minnesota, NASPO and WSCA make no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Products or Services will be procured.

5. **Order of Precedence**

Each Purchase Order that is accepted by the Contractor shall become a part of the Agreement as to the Products and Services listed on the Purchase Order only; no additional terms or conditions conflicting with this Agreement or the Participating Addendum will be added to this Agreement as the result of acceptance of a Purchase Order. The Contractor reserves the right to accept or decline any Purchase Order, in whole or in part. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. Executed Participating Addendum(s);
- B. Terms and conditions of this Agreement;
- C. Exhibits and amendments to this Agreement;
- D. The list of products and services contained in the purchase order;
- E. The request for proposals document P-1331 and Addenda thereto; and
- F. Contractor's proposal including any written clarifications and/or best and final offer.

6. **Payment Provisions**

All payments under this Agreement are subject to the following provisions:

A. **Acceptance**

A Purchasing Entity shall determine whether all Products and Services delivered meet the Contractor's published specifications. No payment shall be made for any Products or Services until the Purchasing Entity has accepted the Products or Services. The Purchasing Entity will make every effort to notify the Contractor within thirty (30) calendar days following delivery of non-acceptance of a product or service; failing which the Product or Service, as the case may be, shall be deemed accepted by the Purchasing Entity.

B. **Payment of Invoice**

1. Payments shall be submitted to the Contractor at the address shown on the invoice, as long as the Contractor has exercised due diligence in notifying the State of Minnesota and/or the Purchasing Entity of any changes to that address. Payments may be made in accordance with either the applicable laws of the Purchasing Entity, or as negotiated by the Contractor and the Purchasing Entity in a Participating Addendum to this Agreement.

2. For Minnesota, per Minn. Stat. § 16A.124, payment shall be made to the Contractor within thirty (30) days following receipt of an undisputed invoice, merchandise or service whichever is later. After the thirtieth day, interest may be paid on the unpaid balance due to the Contractor at the rate of one and one-half percent per month. The Purchasing Entity shall make a good-faith effort to pay within thirty (30) days on all undisputed invoices. Payments may be made via a Purchasing Entity's "Purchasing Card".
3. In the event an order is shipped incomplete (partial), the Purchasing Entity shall pay for each shipment as invoiced by the Contractor unless the Purchasing Entity has clearly specified "No Partial Shipments" on each Purchase Order.

**C. Payment of Taxes**

Payment of taxes for any money received under this agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's federal and state tax identification numbers. If a Purchasing Entity is not exempt from sales, gross receipts, or local option taxes for the transaction, the Contractor shall be reimbursed by the Purchasing Entity to the extent of any tax liability assessed.

The State of Minnesota State agencies are subject to paying Minnesota sales and use taxes. Taxes for State agencies will be paid directly to the Department of Revenue using Direct Pay Permit #1114.

**D. Invoices**

Invoices shall be submitted to the Purchasing Entity at the address shown on the Purchase Order. Contractor shall provide a commercial invoice. The Contractor shall also provide a packing slip/list for each system to identify the components included within the configuration. Invoices shall match the line items on the Purchase Order.

**7. Agreement Term**

Pursuant to Minnesota law, the term of this Agreement shall be effective upon the date of final execution by the State of Minnesota or on September 1, 2004, whichever is later, through August 31, 2007 (3 years). The Agreement may be mutually renewed for two (2) additional one-year terms unless terminated pursuant to the terms of this Agreement.

**8. Termination**

The following provisions are applicable in the event that the agreement is terminated.

**A. Termination for Convenience**

At any time, the State may terminate this agreement, in whole or in part, by giving the Contractor (30) days written notice; provided, however, neither the State nor a Purchasing Entity has the right to terminate a specific purchase order for convenience after it has been issued if the product is ultimately accepted. At any time, the Contractor may terminate this Agreement, in whole or in part, by giving the Contract Administrator sixty (60) days written notice. Such termination shall not relieve the Contractor of warranty or other Service obligations incurred under the terms of this Agreement. In the event of a cancellation, the Contractor shall be entitled to payment, determined on a pro rata basis, for products shipped or services satisfactorily performed and accepted.

**B. Termination for Cause**

Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach that cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

**C. A Purchasing Entity's Rights**

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall retain its rights in all Products and services accepted prior to the effective termination date.

**D. The Contractor's Rights**

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall pay the Contractor all amounts due for Products and services ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.

**9. Non-Appropriation**

The terms of this Agreement and any purchase order issued for multiple years under this Agreement is contingent upon sufficient appropriations being made by the Legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Agreement or in any purchase order or other document, a Purchasing Entity may terminate its obligations under this Agreement, if sufficient appropriations are not made by the governing entity at a level sufficient to allow for payment of the goods or services due for multiple year agreements, or if operations of the paying entity are being discontinued. The Purchasing Entity's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final and binding.

A Purchasing Entity shall provide sixty (60) days notice, if possible, of its intent to terminate for reason cited above. Such termination shall relieve the Purchasing Entity, its officers and employees from any responsibility or liability for the payment of any further amounts under the relevant Purchase Order.

**10. Shipment and Risk of Loss**

- A. All deliveries shall be F.O.B. destination, prepaid and allowed, with all transportation and handling charges included in the price of the product and paid by the Contractor. Responsibility and liability for loss or damage shall remain with the Contractor until delivery to the identified ship to address when responsibility and liability for loss shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations. If the Purchasing Entity provides the Contractor with specific shipping instructions, then the Contractor will be allowed to ship F.O.B. Destination, prepaid and added, with all transportation and handling charges paid for by the Contractor and added as a separate line item on the invoice to the Purchasing Entity.
- B. Whenever a Purchasing Entity does not accept Products and returns them to the Contractor, all related documentation furnished by the Contractor shall be returned also. Unless otherwise agreed upon by the Purchasing Entity, the Contractor is responsible for the pick-up of returned Products. The Contractor shall bear all risk of loss or damage with respect to returned Products except for loss or damage directly attributable to the negligence or wrongful intentional act or omission of the Purchasing Entity.
- C. The Participating Entity and Contractor shall negotiate mutually agreeable shipment requirements in a Participating Addendum. Unless the Participating Entity specified a shipping company, Contractor shall use a reliable and insured shipping company.

**11. Warranties**

- A. The Contractor agrees to warrant and assume responsibility for each Product that it licenses or sells to the Purchasing Entity under this Agreement in accordance with the Contractor's standard warranties. The Contractor acknowledges that the Uniform Commercial Code applies to this Agreement. In general, the Contractor warrants that:
  - 1. The Product will conform with the general information about the Contractor's products which is published in the Contractor's price lists.
  - 2. The Product will be suitable for the ordinary purposes for which such Product is intended,
  - 3. Exhibit A contains additional warranties in effect as of the date of this Agreement. The warranties will be limited in duration to the time period(s) provided in Exhibit A. The warranties will not apply to use of a Product other than as anticipated and intended by

the Contractor, to a problem arising after changes or modifications to the Products or operating system by any party other than the Contractor (unless expressly authorized in writing by the Contractor), or to use of a Product in conjunction or combination with other products or software not authorized by the Contractor. The following is a list of the warranties attached as **Exhibit A**:

- a) AppleCare Protection Plan
- b) One (1) Year Limited Warranty - Worldwide Warranty Coverage, excluding the paragraph titled "Third Party Products"

- B. Contractor may modify the warranties described in Exhibit A from time to time with 30 days prior written approval of the Contract Administrator.
- C. Warranty documents for Products manufactured by a third party shall be delivered to the Purchasing Entity with the Products, as provided by the Manufacturer.

**12. Patent, Copyright, Trademark and Trade Secret Indemnification**

- A. The Contractor shall defend, at its own expense, the State of Minnesota, Participating States, Participating Entities, Purchasing Entities against any claim that any Product or Service provided under this Agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against a Purchasing Entity based upon the Contractor's trade secret infringement relating to any Product or Service provided under this Agreement, the Contractor agrees to reimburse the Purchasing Entity for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Lead State or Participating or Purchasing Entity shall:
  - 1. Give the Contractor prompt written notice of any claim;
  - 2. Allow the Contractor to control the defense or settlement of the claim; and
  - 3. Cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.
- B. If any Products or Service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:
  - 1. Provide a Purchasing Entity the right to continue using the Products or Services;
  - 2. Replace or modify the Products or Services so that it becomes non-infringing; or
  - 3. Accept the return of the Products or Service and refund an amount equal to the depreciated value of the returned Products or Service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any Products or Services modified by the Purchasing Entity to the extent such modification is the cause of the claim.
- C. The Contractor has no obligation for any claim of infringement arising from:
  - 1. The Contractor's compliance with the Purchasing Entity's or by a third party on the Purchasing Entity's behalf designs, specifications, or instructions;
  - 2. The Contractor's use of technical information or technology provided by the Purchasing Entity;
  - 3. Product modifications by the Purchasing Entity or a third party;
  - 4. Product use prohibited by Specifications or related application notes; or
  - 5. Product use with products that are not the Contractor branded.

**13. Price Guarantees**

The Purchasing Entities shall pay the lower of the prices contained in the PSS or an Announced Promotion Price, Educational Discount Price, General Price Reduction price, Trade-In price, Per Transaction Multiple Unit Discount Price, or Standard Configuration Price. Only the General Price Reduction price decreases will apply to all subsequent Purchase Orders accepted by Contractor after the date of the issuance of the General Price Reduction prices.

The initial Per Transaction Multiple Unit, and Standard Configurations Discounts shall be submitted to the Contract Administrator in a format agreeable to both parties prior to signing the Agreement. Once a cumulative volume has been reached, the increased price discount will apply to all future orders, until the next level of cumulative volume is reached. Contractor does not offer cumulative pricing discounts under this Agreement.

**14. Product and Service Schedule**

The Contractor agrees to maintain the PSS in accordance with the following provisions:

- A. The PSS prices for Products and services will conform to the guaranteed price discount levels on file with the Contract Administrator for the following Products:
  - Band 1: File/Print Servers, Mid-Range Servers
  - Band 2: Desktops, Laptops
  - Band 4: Storage Solutions
  - LAN equipment and related software.
  - General Purpose Software
- B. Prices shall be as set forth on the applicable Authorized Apple Education Price List in effect on the date Purchaser's order is accepted by Apple. Prices include standard freight and insurance using an Apple-selected carrier. All applicable local sales or use taxes, duties and other imports, if any, due on account of purchases hereunder shall be paid by Purchaser. Proof of tax-exempt status must be on file at Apple's Support Center for any order to be treated as a tax-exempt transaction.
- C. The Contractor may change the price of any Product or Service at any time, based upon documented baseline price changes, but the guaranteed price discount levels shall remain unchanged during the agreed period unless or until prior approval is obtained from the Contract Administrator. The Contractor agrees that the PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirements will be grounds for further action to be taken against the Contractor.
- D. The Contractor may make model changes; add new Products, and Product upgrades or Services to the PSS in accordance with Item 15. Product Substitutions, below. The pricing for these changes shall incorporate, to the extent possible, comparable price discount levels approved by the Contract Administrator for similar Products or Services.
- E. The Contractor agrees to delete obsolete and discontinued Products from the PSS on a timely basis.
- F. The Contractor shall maintain the PSS on a Contractor supplied Internet web site.

**15. Product Substitutions**

**A. Substitution of units/configurations**

MMD and the WSCA Directors acknowledge that individual units and configurations may stop being produced during the life of the resulting Agreements. Substitution of different units and configurations will be permitted with the prior written approval of the Contract Administrator, such approval to be provided to the Contractor within five (5) business days from receipt of notice that a unit or configuration will be substituted. This substitution is at the sole discretion of the Contract Administrator, subject only to review and approval of the Contract Administrator.

**B. Addition of units/configurations**

MMD and the WSCA Directors acknowledge that with the evolution of technology, new, emerging units and configurations will develop. Addition of these new, emerging units to the PSS may be permitted, with the prior approval of the Contract Administrator and the WSCA Directors, such approval to be provided to the Contractor within forty-five (45) business days from receipt of notice that a unit or configuration will be added. The addition of new, emerging units and configurations is at the sole discretion of the Contract Administrator, subject only to review and approval of the WSCA Directors.



**16. Technical Support**

The Contractor agrees to maintain a toll-free technical support telephone line. The line shall be accessible to Purchasing Entity personnel who wish to obtain competent technical assistance regarding the hardware and software installation or operation of Contractor-supplied Products during the product warranty period or during a support agreement.

**17. Take back/Environment/Energy Efficiency Programs**

The Contractor agrees to maintain for the term of this Agreement, and all renewals/extensions thereof, programs as described below:

A. Apple's Recycling Program accepts: CPUs; Servers; Monitors; Flat Panel Displays; Notebook Computers; Printers; Scanners; Fax machines; Desktop copiers / Multifunction (Printer/Scanner/Fax/Copier) Keyboards, mice, speakers, etc.

1. Apple Recycles accepts product from all manufacturers.
2. Unit is defined as one CPU w/monitor, keyboard and mouse; or one server; or one laptop; or one monitor w/o CPU; or one printer; or one scanner; or one other such peripheral device.
3. Disk Cleansing. Data removal is the responsibility of the product owner. Apple Recycles does not assume any responsibility for data left on hard drives.
4. Apple's recycling partners issue a "Certificate of Recycling" for all recycled equipment orders. Apple Recycles' partners are ISO 14001 Certified.
5. Apple Recycles provides customers and consumers of all sizes with an integrated and comprehensive menu of environmentally sound options for recycling of their electronic assets regardless of make or original manufacturer. Apple Recycles' services are scaled to meet the needs and requirements from the individual consumer to large institutional customers to our local municipalities.
6. Apple Recycles' menu includes equipment recycling of end-of-life electronic assets, certified destruction and recycling of these assets when applicable, and when feasible, resale of these assets as a means to extend the useful life of the components and/or sub components.
7. All electronic material processed by Apple Recycles is monitored throughout the recycling process. Apple Recycles tracks and maintains an audit trail for each and every shipment of electronic recyclables sent to our recycling partners. Through this "Shipping Authorization" (SA) system, Apple Recycles accounts for every pallet of material by SA number and issues Certificates of Destruction & Recycling corresponding to each SA number. Additionally, recycling deposition reports provide line item detail for each and every item recycled, to the pound, of every commodity (i.e. Copper, plastic, metal, etc) produced during the recycling process, thus providing an audit trail from "Cradle to Grave."
8. Takeback/Recycling Charges: There is a per unit cost located in Appendix C for Apple to complete its recycling service. This price includes boxes if needed/requested, and shipping and handling costs. When placing an order, the customer must have an equal number of new Equipment units and the Apple Recycling SKU for the order to be valid. If there is a discrepancy in the numbers, the order will be returned for correction.
9. The customer must box the old Equipment in appropriately padded boxes, or they may choose to use boxes, which will be provided by Apple upon customer request. The customer will then place the shipping label(s) provided by Apple on each box, or pallet of boxes. There is a minimum requirement of 25 units per location for pick up services. Customer will receive a notice of destruction for their records when Apple has completed the recycling process.
10. Apple Recycling fee part # is: D1592LL/A



- B. Compliance with the European Union's WEEE Directive:
  - 1. Reduction/minimization/avoidance of the use of toxic and hazardous constituents (cadmium, chromium, mercury, and/or lead) & compliance with international directives such as the European Union's Directive "Restriction of Hazardous Substances"
  - 2. Apple's Regulated Substances Specification prohibits the use of mercury, cadmium, hexavalent chromium and brominated flame retardants as outlined in Article 4 and the Annex of the RoHS directive. Apple currently bans the use of lead for plastic components, paints, inks and batteries.
  - 3. Regarding the use of lead in solder paste and electronic components, Apple is actively investigating the use of alternative substances that will ensure that product performance and quality is not compromised. We are working actively with our supply chain in order to develop environmentally responsible alternatives.
  - 4. Apple anticipates full compliance for all products distributed worldwide with the RoHS directive by July 2006 implementation date.
  - 5. Reduction of chlorinated plastics (PVC) and brominated flame retardants. All plastic parts > 25gr used in Apple products do not contain any brominated flame retardants. Apple has also banned the use of PVC for plastic parts > 25gr (cable enclosures exempt)
  - 6. Certification by independent third party eco-labeling programs (TCO, Blue Angel, and Nordic Swan). iMac, eMac and Apple displays are certified to TCO. Please find enclosed 18 Apple Environmental Product Declarations for Apple products, which outlines compliance to TCO and Blue Angel criteria. These documents can also be found at:  
[http://www.apple.com/about/environment/design/env\\_attributes/index.html](http://www.apple.com/about/environment/design/env_attributes/index.html)
  - 7. Packaging used for Apple products is designed to be fully recyclable and meets all design, recycling and material requirements of EU packaging directive 94/62/EC. Apple packaging does contain or consist of PVC.
- C. Information on Energy Efficiency
  - 1. All Apple products meet the applicable requirements set by Energy Star and the US FEMP (Federal Energy Management Program). Apple external power supplies used for Apple's computer products meet the EU Code of Conduct for external power supplies
  - 2. Both of our manufacturing facilities are ISO 14001 certified.
- D. Product labeling of compliance with Items B & C above, as well as identification of such information on the web site.
- E. The Contractor will notify the Contract Administrator, in writing, of any additions/changes/deletions to the above programs.

**18. Product Delivery**

Contractor agrees to make commercially reasonable efforts to deliver Products to Purchasing Entities within 10 - 14 days after receipt of a valid Purchase Order, or in accordance with the schedule in the Purchasing Entity's Purchase Order.

**19. Force Majeure**

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, strike, riot, industry-wide constraints, or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party defaulting under this provision must provide the other party prompt written notice of the default and take all necessary steps to bring about performance as soon as practicable.

**20. Records and Audit**

Per Minn. Stat. § 16C.05, Subd. 5, the books, records, documents, and accounting procedures and practices of the Contractor and its employees, agents, or subcontractors relevant to the Minnesota transactions must be made available and subject to examination by the contracting agency or its agents, the Legislative Auditor and/or the State Auditor for a minimum of six years after the end of the Contract or transaction.

Unless otherwise required by other than Minnesota Purchasing Entity governing law, such records relevant to other Purchasing Entity transactions shall be subject to examination by appropriate government authorities for a period of three years from the date of acceptance of the Purchase Order.

**21. Independent Contractor**

The Contractor and its agents and employees are independent contractors and are not employees of the State of Minnesota or of any participating entity. The Contractor has no authorization, express or implied to bind the Lead State, NASPO, WSCA or any Participating Entity to any agreements, settlements, liability or understanding with other third parties whatsoever, and agrees not to perform any acts as agent for the Lead State, NASPO, WSCA, or Participating Entity, except as expressly set forth herein. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the Lead State or Participating Entity as a result of this Agreement.

**22. Use of Servicing Subcontractors**

The Contractor may subcontract services and purchase order fulfillment and/or support in accordance with the following paragraphs. However, the Contractor shall remain solely responsible for the performance of this Agreement.

- A. Reseller/Agent, Service Provider or Servicing Subcontractors shall be identified individually or by class in the applicable Participating Addendum, or as noted in the Participating Addendum on the Purchasing Entities extranet site. The ordering and payment process for Products or Services shall be defined in the Participating Addendum.

**23. Payments to Subcontractors**

In the event the Contractor hires subcontractors to perform all or some of the duties of this Agreement, the Contractor understands that Minn. Stat. § 16A.1245 requires that any such subcontractor be paid within ten (10) days of the Contractor's receipt of payment from the State for undisputed services provided by the subcontractor. The Contractor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under this Agreement. In the event the Contractor fails to make timely payments to a subcontractor, the State may, at its sole option and discretion, pay a subcontractor any amounts due from the Contractor for work performed under this Agreement and deduct said payment from any remaining amounts due the Contractor. Before any such payment is made to a subcontractor, the State shall provide the Contractor written notice that payment will be made directly to a subcontractor. The Contractor shall ensure that the subcontractor transfers all intellectual or industrial property rights, including but not limited to any copyright it may have in the work performed under this Agreement, consistent with the intellectual property rights and ownership sections of this Agreement. In the event the Contractor does not obtain the intellectual property rights of the subcontractor consistent with the transfer of rights under this Agreement, the State may acquire such rights directly from the subcontractor. Any and all costs associated with such a direct transfer may be deducted from any amount due the Contractor.

**24. Indemnification**

The Contractor shall hold the Lead State, Participating Entities and its agencies and employees harmless and shall indemnify the Lead State, Participating Entities and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to real property or tangible personal property finally awarded arising from the negligent or willful acts or omissions of the contractor, its agents, officers, employees or subcontractors. Contractor shall not be liable for damages that are the result of negligence by the Lead State,

Participating Entity, or its employees.

**25. Amendments**

Agreement amendments shall be negotiated by the State with the Contractor whenever necessary to address changes in the terms and conditions, costs, timetable, or increased or decreased scope of work. This Agreement shall be amended only by written instrument executed by the parties. An approved Agreement amendment means one approved by the authorized signatories of the Contractor and the State as required by law.

**26. Scope of Agreement**

This Agreement incorporates all of the agreements of the parties concerning the subject matter of this Agreement. No prior agreements, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**27. Severability**

If any provision of this Agreement, including items incorporated by reference, is found to be illegal, unenforceable, or void, by a court of competent jurisdiction then both the State and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Agreement is legally valid, it shall not be affected by such declaration or finding and shall be fully performed.

**28. Enforcement of Agreement/Waivers**

- A. No covenant, condition, duty, obligation, or undertaking contained in or made a part of this Agreement shall be waived except by the written consent of the parties. Forbearance or indulgence in any form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the other party. Until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the forbearing/indulging party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.
- B. Waiver of any breach of any provision of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.
- C. Neither party's failure to exercise any of its rights under this Agreement will constitute or be deemed a waiver or forfeiture of those rights.

**29. Web Site Maintenance**

- A. The Contractor agrees to maintain and support an Internet website linked to the State's administration website for access to the PSS, service selection assistance, problem resolution assistance, billing concerns, configuration assistance, Product descriptions, Product specifications and other aids in accordance with reasonable instructions provided by the Contract Administrator. The Contractor agrees that the PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirements will be grounds for further action to be taken against the Contractor.
- B. The Contractor agrees to maintain and support Participating State and Entity Internet website for access to the specific Participating Entity PSS, as well as all other items listed in Item 29.A. listed above. The website shall have the ability to hold quotes for 45 days, as well as the ability to change the quote.
- C. The Contractor may provide electronic commerce assistance for the electronic submission of Purchase Orders, purchase order tracking and reporting.

**30. Equal Opportunity Compliance**

The Contractor agrees to abide by federal laws and the laws, regulations, and executive orders of the state in which its primary place of business is located pertaining to equal employment opportunity. In accordance with such laws, regulations, and executive orders, the Contractor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by the contractor under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

The Contractor certifies that it will remain in compliance with Minn. Stat. § 363.073 during the life of the Agreement.

**31. Limitation of Liability**

The Contractor's liability to a Purchasing Entity for any cause whatsoever shall be limited to the purchase price paid to the Contractor for the products and services that are the subject of the Purchasing Entity's claim. The foregoing limitation does not apply to Paragraphs 12 and 24 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence. In no event shall the Contractor be liable for any indirect, special, punitive, or consequential damages arising out of this Agreement or the use of the Products or Services purchased by the Purchasing Entity hereunder.

**32. Governing Law**

This Agreement shall be governed and construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against this Agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's state. Venue for any claim, dispute or action concerning the construction and effect of the Agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against this Agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's state.

**33. Change in Contractor Representatives**

Contractor shall appoint a primary representative to work with the Contract Administrator to maintain, support and market this Agreement. The Contractor shall notify the Contract Administrator of changes in any Contractor key personnel, in writing, and in advance, if possible. The State reserves the right to require a change in Contractor's then-current primary representative if the assigned representative is not, in the opinion of the State, adequately serving the needs of the Lead State and the Participating Entities.

**34. Release**

The Contractor, upon final payment of the amount due under this Agreement, releases the Lead State and Participating Entities, its officers and employees, from all contractual liabilities, claims and obligations whatsoever arising from or under this Agreement, except as expressly provided in Paragraph 41. Survival, below. The Contractor agrees not to purport to bind the Lead State or any Participating Entity to any obligation, unless the Contractor has express written authority to do so, and then only within the strict limits of the authority.

**35. Data Practices**

- A. The Contractor and the State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State to the Contractor and all data provided to the State by the Contractor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor in accordance with this Agreement that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13.
- B. In the event the Contractor receives a request to release the data referred to in this article, the Contractor must immediately notify the State. The State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released. The civil

remedies of Minn. Stat. § 13.08, apply to the release of the data referred to in this article by either the Contractor or the State.

- C. The Contractor agrees to indemnify, save, and hold the State, its agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce this provision of the Agreement. In the event that the Contractor subcontracts any or all of the work to be performed under the Agreement, the Contractor shall retain responsibility under the terms of this paragraph for such work.
- D. The Contractor agrees to be bound by the data practices requirements as outlined in the Participating Addendum of a Participating State or Participating Entity.

**36. Organizational Conflicts of Interest**

- A. The Contractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:
  - a Contractor is unable or potentially unable to render impartial assistance or advice to the State;
  - the Contractor's objectivity in performing the work is or might be otherwise impaired; or
  - the Contractor has an unfair competitive advantage.
- B. The Contractor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the Department of Administration's Materials Management Division that shall include a description of the action the Contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the Agreement. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the Agreement and did not disclose the conflict to the Contract Administrator, the State may terminate the Agreement for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Agreement," "Contractor," and "Contract Administrator" modified appropriately to preserve the State's rights.

**37. Replacement Parts**

Unless otherwise restricted in a Participating Addendum or maintenance service agreement, replacement parts may be refurbished.

**38. FCC Certification**

The Contractor agrees that Equipment supplied by the Contractor meets all applicable FCC Certifications. Improper, falsely claimed or expired FCC certifications are grounds for termination of this Agreement for cause.

**39. Site Preparation**

A Purchasing Entity shall prepare and maintain its site in accordance with written instructions furnished by the Contractor prior to the scheduled delivery date of any Products and Services and shall bear the costs associated with the site preparation.

**40. Assignment**

The Contractor shall not sell, transfer, assign, or otherwise dispose of this Agreement or any portion hereof or of any right, title, or interest herein without the prior written consent of the State's authorized agent. This Agreement is a manufactured-direct solicitation and Agreement. Assignment to an entity that is not a manufacturer, as defined in this Agreement, is **NOT** within the Scope of this Agreement. Such consent shall not be unreasonably withheld. The Contractor shall give written notice to the State's authorized agent of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of this Agreement. Failure to do so may result in the Contractor being held in default. This consent requirement includes reassignment of this Agreement due to a change in ownership,

merger, or acquisition of the Contractor or its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contractor's right to assign this Agreement to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contractor shall remain solely liable for all performance required and provided under the terms and conditions of this Agreement. The Contractor may assign payments in accordance with specific provisions stated in a Participating Addendum.

**41. Survival**

Certain paragraphs of this agreement including but not limited to Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; Limitation of Liability; Governing Law; Audits; and Publicity shall survive the expiration of this agreement. Software licenses, warranty and service agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

**42. Succession**

This Agreement shall be entered into and be binding upon the successors and assigns of the parties.

**43. Notification**

A. If one party is required to give notice to the other under the Agreement, such notice shall be in writing and shall be effective upon receipt. Delivery through the US Postal service shall be deemed as delivered three business days after being mailed. Delivery may be by certified United States mail, or by hand, in which case a signed receipt shall be obtained. A facsimile transmission shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. All notices shall be addressed as follows:

**To MMD:**

Department of Administration  
Materials Management Division  
Bernadette Kopischke, CPPB  
Acquisition Management Specialist  
50 Sherburne Avenue  
112 State Administration Building  
St. Paul, MN 55155  
Fax: 651.297.3996  
Email: bernie.kopischke@state.mn.us

**To Contractor:**

Apple Computer, Inc.  
Sales Contracts Management  
1 Infinite Loop, Mail Stop 38-3CM  
Cupertino, CA 95014  
contracts@apple.com

- B. Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph 44. The carrier for mail delivery and notices shall be the agent of the sender.

**44. Reporting and Fees**

**A. Administration Reporting and Fees**

1. The Contractor agrees to provide periodic utilization reports to the Contract Administrator in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
June 26	July 31
September 25	October 30
December 25	January 29
March 26	April 30

Apple Recycling Services SKU D1592LL/A purchases will be included within the periodic report. No supplemental report will be provided. Apple will not provide reporting on the type of units taken back.

2. The periodic report shall include, but not be limited to the net (gross sales minus returns, credits, and deductions) sales for the period subtotaled by Purchasing Entity name, within the Purchasing Entity's state name. A standard format of data elements shall be developed for the report. The Contractor shall submit a check payable to Western States Contracting Alliance for an amount equal to one-twentieth of one percent (0.0005) of the net sales for the period.
3. The Contractor agrees to include all Reseller Agent sales in the periodic utilization reports described above. In addition, the Contractor agrees to include in the utilization report a Reseller Agent utilization report of the net sales for the period subtotaled by Purchasing Entity name, within Purchasing Entity state name by Reseller Agent Name.
4. The Contractor agrees to provide with the quarterly utilization report a supplemental report of the credits associated with the units taken back in a format to be mutually agreed to.

5. The utilization reports shall be submitted to the Contract Administrator via electronic mail in a Microsoft Excel spreadsheet format, or other methods such as direct access to Internet or other databases.
6. If requested by the Contract Administrator, the Contractor agrees to provide supporting Purchase Order detail records on a mutually agreed magnetic media in a mutually agreed format. Such requests shall not exceed twelve per year.
7. The failure to file the utilization reports and fees on a timely basis shall constitute grounds for the removal of the Contractor's primary representative, suspension of this Agreement or termination of this Agreement for cause.
8. The Contract Administrator shall be allowed access to all reports from all Purchasing Entities.

**B. Participating Entity Reports and Fees**

1. Participating Entities may require an additional fee be paid directly to the State on purchases made by Purchasing Entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in a Participating Addendum that is made a part of this Agreement. The Contractor may adjust PSS pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of that State. All such agreements shall have no effect whatsoever on the WSCA fee or the prices paid by the Purchasing Entities outside the jurisdiction of the State requesting the additional fee.
2. The Contractor agrees to provide additional reports to Purchasing Entities upon agreement by both parties as to the content and delivery method of the report. Methods of delivery may include direct access to Internet or other databases.
3. Each State Purchasing Entity shall be allowed access to reports from all entities within that State.

**45. Default and Remedies**

- A. Any of the following shall constitute cause to declare this Agreement or any order under this Agreement in default:
  1. Consistent nonperformance of contractual requirements; or
  2. A material breach of any term or condition of this Agreement.
- B. A written notice of default, and an opportunity to cure within 30-days notification of the written notice, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire Agreement), a Participating Entity (in the case of a breach of the participating addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.
- C. If the default remains after the opportunity for cure, the non-defaulting party may:
  1. Exercise any remedy provided by law or equity;
  2. Terminate the Agreement, a Participating Addendum, or any portion thereof, including any Purchase Orders issued against the Agreement;
  3. Impose liquidated damages as mutually agreed by the parties, as specified in an Amendment to a Participating Addendum;
  4. In the case of default by the Contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend Contractor from receiving future solicitations from within the Participating Entity's jurisdiction.



**46. Audits**

- A. The Contractor agrees to assist the Contract Administrator or designee with web site Product and pricing audits based on mutually acceptable procedures.
1. The product audit will closely monitor the products and services listed on the website to insure they comply with the approved products and services. The addition of products or services not approved by the Contract Administrator will not be tolerated and may be considered a material breach of this Agreement.
- B. Upon request, the Contractor agrees to assist Participating Entities with invoice audits to ensure that the Contractor is complying with this Agreement in accordance with mutually agreed procedures set forth in the Participating Addendum.

**47. Extensions**

If specifically authorized by provision in a Participating Addendum, the Contractor may, at the sole discretion of the Contractor and in compliance with the laws of the Participating State, offer Products and services to non-profit organizations, private schools, Native American governmental entities, government employees and students within the governmental jurisdiction of the entity completing the Participating Addendum with the understanding that the State has no liability whatsoever concerning payment for products or services.

**48. Sovereign Immunity**

The State does not waive its sovereign immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

**49. Ownership**

- A. **Ownership of Documents/Copyright.** Any reports, studies, photographs, negatives, databases, computer programs, or other documents, whether in tangible or electronic forms, prepared by the Contractor in the performance of its obligations under the Agreement and paid for by the State shall be the exclusive property of the State and all such material shall be remitted to the State by the Contractor upon completion, termination or cancellation of the Agreement. The Contractor shall not use, willingly allow or cause to allow such material to be used for any purpose other than performance of the Contractor's obligations under the Agreement without the prior written consent of the State.
- B. **Rights, Title and Interest.** All rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trade marks, and service marks in the said documents that the Contractor conceives or originates, either individually or jointly with others, which arise out of the performance of the Agreement and are ordered as a work product, will be the property of the State and are, by the Agreement, assigned to the State along with ownership of any and all copyrights in the copyrightable material. The Contractor also agrees, upon the request of the State, to execute all papers and perform all other acts necessary to assist the State to obtain and register copyrights on such materials. Where applicable, works of authorship created by the Contractor for the State in performance of the Agreement shall be considered "works for hire" as defined in the U.S. Copyright Act. Nothing in this Agreement shall be construed as transferring any right, title, or interest in any of the Contractor's or their third party's confidential information, trademarks, copyrights, intellectual property or other proprietary interest.

**50. Prohibition Against Gratuities**

- A. The State may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Agreement if it is found by the State that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any employee, agent, or representative of the Contractor to any officer or employee of the State with a view toward securing this Agreement, or securing favorable treatment with respect to the award or amendment of this Agreement, or the making of any determinations with respect to the performance of this Agreement.

- B. The Contractor certifies that no elected or appointed official or employee of the State has benefitted or will benefit financially or materially from this Agreement. This Agreement may be terminated by the State if it is determined that gratuities of any kind were either offered to or received by any of the aforementioned individuals from the Contractor, its agent, or its employees.

**51. Antitrust**

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this Agreement resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

**52. Right to Publish**

- A. Any publicity given to the program, publications or services provided resulting from the Agreement, including but not limited to notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, or its employees individually or jointly with others, or any subcontractors or resellers shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Agreement prior to its approval by the Contract Administrator.
- B. The Contractor shall not make any representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Agreement without the prior written consent of the Agreement Administrator. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

**53. Performance While Dispute is Pending**

Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under this Agreement that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under this Agreement, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.

**54. Hazardous Substances**

To the extent that the goods to be supplied to the Purchasing Entity by the Contractor contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable State and federal laws and regulations, the Contractor must provide the Purchasing Entity with Material Safety Data Sheets regarding those substances (including mercury). A copy must be included with each delivery.

**55. Customer Satisfaction/Complaint Resolution**

- A. The Contractor's process for resolving complaints concerning products, support, and billing problems is attached as **Exhibit B**.
- B. The Contractor will submit a format for a survey for approval by the Contract Administrator. The Contractor will survey its customers in each Participating State two (2) months prior to the annual meeting with the Contract Administrator.

**56. Value Added Services**

The Contractor is expected to provide such services as installation, training, and software imaging upon request of the Purchasing Entity. Additional Value Added Services offered by the Contractor are attached as **Exhibit C**, including relative costs associated with those services.

**57. E-Rate Program**

The Contractor's E-Rate identification number is 143004358. The list of E-Rate qualifying products is as follows:

- A. Apple wireless & server solutions, including but not limited to: servers and displays.

The Contractor shall make every effort to continue its involvement in this program and to add products as applicable.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by the State of Minnesota, Commissioner of Administration, below.

**1. APPLE COMPUTER, INC.**

The Contractor certifies that the appropriate person(s) have executed this Agreement on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: 

Title: Preston Patton  
Senior Manager

Date: 8/4/04

By: \_\_\_\_\_


Title: \_\_\_\_\_

Date: \_\_\_\_\_

**2. MATERIALS MANAGEMENT DIVISION**

In accordance with Minn. Stat. § 16C.03,

Subd. 3.

By: 

Title: Acquisition Management Specialist

Date: 8/5/04

**3. COMMISSIONER OF ADMINISTRATION**  
Or delegated representative

By: 

Date: 5 AUG 04

## **EXHIBIT A - ADDITIONAL WARRANTIES**

### **AppleCare Protection Plan**

The AppleCare Protection Plan is a comprehensive plan that provides three years of service and support for one economical price, and includes telephone support, powerful diagnostic tools, Apple-certified repairs, and 24-hour-a-day Internet support.

During the plan's term, customers receive direct telephone access to Apple's Technical Support group, the people who know the Macintosh system best. They'll assist with both hardware and operating system difficulties—walking through to a solution. If repairs are needed, the AppleCare Protection Plan ensures that they'll be performed by certified Apple technicians using genuine Apple parts.

The plan covers all repair costs due to defects in materials and workmanship, including replacement parts and labor charges. This makes it an excellent choice for individuals who want protection from unexpected repair costs, and for businesses or institutions that want to control their computer maintenance budgets. In fact, given that a single repair can cost significantly more than the whole three years of the AppleCare Protection Plan, the repair coverage alone can make the investment worthwhile.

With the purchase of the AppleCare Protection Plan, customers also receive a CD containing TechTool Deluxe software from Micromat. This versatile product tests the major components of the Apple system, including processors, RAM, and hard drives. It also checks the software and can help individuals diagnose and fix many software conflicts themselves. Apple also provides a special AppleCare Protection Plan web site, where Protection Plan members have easy access to extensive information (available only to members) to help the system running smoothly.

The AppleCare Protection Plan covers the following Apple products:

- iMac computers
- iBook computers
- PowerBook computers
- Power Mac G4 computers
- Macintosh Server G4 computers
- Apple displays purchased at the same time and location with a compatible Power Mac G4 or Macintosh Server G4 system

The AppleCare Protection Plan can only be purchased while the computer is still under its original one-year warranty.

## **EXHIBIT A - Continued**

### **One (1) Year Limited Warranty – Worldwide Warranty Coverage**

Apple's warranty obligations are limited to the terms set forth below:

Apple, as defined below, warrants this Apple-branded hardware product against defects in materials and workmanship under normal use for a period of ONE (1) YEAR from the date of retail purchase by the original end-user purchaser ("Warranty Period"). If a hardware defect arises and a valid claim is received within the Warranty Period, at its option, Apple will either (1) repair the hardware defect at no charge, using new or refurbished replacement parts, or (2) exchange the product with a product that is new or which has been manufactured from new or serviceable used parts and is at least functionally equivalent to the original product, or (3) refund the purchase price of the product. Apple may request that you replace defective parts with new or refurbished user-installable parts that Apple provides in fulfillment of its warranty obligation. A replacement product or part, including a user-installable part that has been installed in accordance with instructions provided by Apple, assumes the remaining warranty of the original product or ninety (90) days from the date of replacement or repair, whichever provides longer coverage for you. When a product or part is exchanged, any replacement item becomes your property and the replaced item becomes Apple's property. Parts provided by Apple in fulfillment of its warranty obligation must be used in products for which warranty service is claimed. When a refund is given, the product for which the refund is provided must be returned to Apple and becomes Apple's property.

#### **EXCLUSIONS AND LIMITATIONS**

This Limited Warranty applies only to hardware products manufactured by or for Apple that can be identified by the "Apple" trademark, trade name, or logo affixed to them. The Limited Warranty does not apply to any non-Apple hardware products or any software, even if packaged or sold with Apple hardware. Manufacturers, suppliers, or publishers, other than Apple, may provide their own warranties to the end user purchaser, but Apple, in so far as permitted by law, provides their products "as is". Software distributed by Apple with or without the Apple brand name (including, but not limited to system software) is not covered under this Limited Warranty. Refer to the licensing agreement accompanying the software for details of your rights with respect to its use.

Apple does not warrant that the operation of the product will be uninterrupted or error-free. Apple is not responsible for damage arising from failure to follow instructions relating to the product's use.

This warranty does not apply: (a) to damage caused by use with non-Apple products; (b) to damage caused by accident, abuse, misuse, flood, fire, earthquake or other external causes; (c) to damage caused by operating the product outside the permitted or intended uses described by Apple; (d) to damage caused by service (including upgrades and expansions) performed by anyone who is not a representative of Apple or an Apple Authorized Service Provider; (e) to a product or part that has been modified to significantly alter functionality or capability without the written permission of Apple; (f) to consumable parts, such as batteries, unless damage has occurred due to a defect in materials or workmanship; or (g) if any Apple serial number has been removed or defaced.

TO THE EXTENT PERMITTED BY LAW, THIS WARRANTY AND REMEDIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REMEDIES AND CONDITIONS, WHETHER ORAL OR WRITTEN, STATUTORY, EXPRESS OR IMPLIED. AS PERMITTED BY APPLICABLE LAW, APPLE SPECIFICALLY DISCLAIMS ANY AND ALL STATUTORY OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES AGAINST HIDDEN OR LATENT DEFECTS. IF APPLE CANNOT LAWFULLY DISCLAIM STATUTORY OR IMPLIED WARRANTIES THEN TO THE EXTENT PERMITTED BY LAW, ALL SUCH WARRANTIES SHALL BE LIMITED IN DURATION TO THE DURATION OF THIS EXPRESS WARRANTY AND TO REPAIR OR REPLACEMENT SERVICE AS DETERMINED BY APPLE IN ITS SOLE DISCRETION. No Apple reseller, agent, or employee is authorized to make any modification, extension, or addition to this warranty.

EXCEPT AS PROVIDED IN THIS WARRANTY AND TO THE EXTENT PERMITTED BY LAW, APPLE IS NOT RESPONSIBLE FOR DIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY BREACH OF WARRANTY OR CONDITION, OR UNDER ANY OTHER LEGAL THEORY, INCLUDING BUT NOT LIMITED TO LOSS OF USE; LOSS OF REVENUE; LOSS OF ACTUAL OR ANTICIPATED PROFITS (INCLUDING LOSS OF PROFITS ON CONTRACTS); LOSS OF THE USE OF MONEY; LOSS OF ANTICIPATED SAVINGS; LOSS OF BUSINESS; LOSS OF OPPORTUNITY; LOSS OF GOODWILL; LOSS OF REPUTATION; LOSS OF, DAMAGE TO OR CORRUPTION OF DATA; OR ANY INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE HOWSOEVER CAUSED INCLUDING THE REPLACEMENT OF EQUIPMENT AND PROPERTY, ANY COSTS OF RECOVERING, PROGRAMMING, OR REPRODUCING ANY PROGRAM OR DATA STORED OR USED WITH APPLE PRODUCTS AND ANY FAILURE TO MAINTAIN THE CONFIDENTIALITY OF DATA STORED ON THE PRODUCT. THE FOREGOING LIMITATION SHALL NOT APPLY TO DEATH OR PERSONAL INJURY CLAIMS. APPLE DISCLAIMS ANY REPRESENTATION THAT IT WILL BE ABLE TO REPAIR ANY PRODUCT UNDER THIS WARRANTY OR MAKE A PRODUCT EXCHANGE WITHOUT RISK TO OR LOSS OF THE PROGRAMS OR DATA.

#### CONSUMER PROTECTION LAWS

FOR CONSUMERS WHO ARE COVERED BY CONSUMER PROTECTION LAWS OR REGULATIONS IN THEIR COUNTRY OF PURCHASE OR, IF DIFFERENT, THEIR COUNTRY OF RESIDENCE, THE BENEFITS CONFERRED BY THIS WARRANTY ARE IN ADDITION TO ALL RIGHTS AND REMEDIES CONVEYED BY SUCH CONSUMER PROTECTION LAWS AND REGULATIONS. Some countries, states and provinces do not allow the exclusion or limitation of incidental or consequential damages or exclusions or limitations on the duration of implied warranties or conditions, so the above limitations or exclusions may not apply to you. This warranty gives you specific legal rights, and you may also have other rights that vary by country, state or province. This Limited Warranty is governed by and construed under the laws of the country in which the product purchase took place. Apple, the warrantor under this Limited Warranty, is identified at the end of this document according to the country or region in which the product purchase took place.

#### OBTAINING WARRANTY SERVICE

Please access and review the online help resources referred to in the documentation accompanying this hardware product before requesting warranty service. If the product is still not functioning properly after making use of these resources, please contact the Apple representatives or, if applicable, an Apple Authorized Service Provider located using the information provided in the documentation. An Apple representative or Apple Authorized Service Provider will help determine whether your product requires service and, if it does, will inform you how Apple will provide it. Apple or its Apple Authorized Service Providers will provide warranty service on products that are tendered or presented for service during the Warranty Period, as permitted by law. If the product is portable, meaning that it can operate independently without a power cord, you may obtain warranty service worldwide. However, service will be limited to the options available in the country where service is requested. If the product is not portable, warranty service may be restricted to the country where the product is purchased. Service options, parts availability and response times will vary according to country. You may be responsible for shipping and handling charges if the product cannot be serviced in the country it is in. In accordance with applicable law, Apple may require that you furnish proof of purchase details and/or comply with registration requirements before receiving warranty service. Please refer to the accompanying documentation for more details on this and other matters on obtaining warranty service.

If your product is capable of storing data or software programs, you should make periodic backup copies of the data and programs contained on the product's hard drive or other storage media to protect your data and as a precaution against possible operational failures. Before you deliver your product for warranty service it is your responsibility to keep a separate backup copy of the system software, application software and data, and disable any security passwords. You will be responsible for reinstalling all such software, data and passwords. Apple and its Authorized Service Providers are not liable for any damage to or loss of any programs, data, or other information stored on any media, or any non-Apple product or part not covered by this warranty. Recovery and reinstallation of system and application software and user data are not covered under this Limited Warranty.

## **EXHIBIT B - COMPLAINT RESOLUTION**

### **A. Service/Billing**

For customer service or billing inquiries, customers may:

1. Contact an Apple representative at 1-800-800-2775. Hours of operation are Monday – Friday, 7:30am – 6pm CST, or
2. Notify the Contractor via e-mail at an address to be agreed to between the State and the Contractor, or
3. Notify the Contractor via a web site address to be agreed to between the State and the Contractor.

### **B. Equipment**

#### **1. Defective Items**

In the event a product defect is found, customers will call Apple Technical Support at 1-800-500-7078. Such a defect, if any, is covered under the terms of the product's warranty and the Contractor is responsible for working with the manufacturer on behalf of the Purchasing Entity to resolve the problem.

#### **2. Products That Are Inoperable When Delivered**

For any product that is wholly inoperable when delivered, customers will call Apple Tech Support at 1-800-500-7078 within thirty days of the invoice date. Apple Tech Support will determine if it is appropriate to offer the following options:

- **Replacement:** The same product that was ordered will be shipped at Apple's expense. A Sales Support Representative will contact the customer within 24 hours with the replacement product delivery time, and the process to return the inoperable product.
- **Service:** The product may be repaired; however, once serviced the product is no longer eligible for replacement. Product must be deemed inoperable upon receipt by Apple Tech Support within thirty days of the invoice date in order to receive a replacement unit.

#### **3. Products Lost Or Damaged In Transit**

For products shipped pursuant to Apple's standard practices in all but the last week of every Apple fiscal quarter, Apple will issue credits or replace products returned due to damage in transit or that are lost in transit.

When not shipping products pursuant to Apple's standard practices but instead shipping via a carrier selected by Purchaser, Apple will not issue credits or provide replacement products for products returned due to damage in transit or that is lost in transit.

#### **4. Claims & Payment Process**

For all product damaged or lost in transit in any week of the quarter, Purchaser must notify an Apple Sales Support Operations ("SSO") representative at 1-800-800-2775 within ten (10) business days from receipt of receiving damaged products, a short shipment, or not receiving an expected order.

For product shipped during weeks 1 through 12 of Apple's fiscal quarters, Apple will either issue a credit or replace product damaged or lost in transit and place claims and/or tracers on behalf of the Purchaser. Apple will issue a credit or ship replacement product to the Purchaser upon receipt of the damaged product or confirmation of the lost product.

For product shipped during week 13 during Apple's fiscal quarters, Apple will prepare and file a claim with the third party insurance carrier with the Purchaser listed as the loss payee. Once the insurance requirements are satisfied, the Purchaser will receive a check from the insurance carrier for the purchase price of the product rather than receiving replacement product or credit from Apple. Or, instead of receiving the check from the insurance carrier, the Purchaser can elect to assign insurance



proceeds resulting from lost or damaged product to Apple and Apple will credit the Purchaser's account for the amount of the insurance proceeds. The Customer will need to place a new order for replacement product. Apple believes the insurance policy claim limits will be adequate to cover any losses incurred by Purchaser. However, Apple will not be liable in the event the entire claim is not covered for any reason, including exceeding the claim limits. Title and risk of loss to returned product will pass to the insurance company upon shipment to Apple by Purchaser.

### **C. Escalation Process**

Apple provides resources for customer escalations and resolution through various groups as listed below. Procedures for addressing and resolving customer problems and complaints vary depending on the nature of the issue. Apple's support metrics include same day or next day resolution for most issues.

#### **1. Education Support 1-800-800-APPL (1-800-800-2775)**

Provides sales, service and technical support for Apple education customers. Representatives are available to assist customers Monday through Friday from 7am to 8pm CST and 8am to 8pm CST on Saturday and Sunday. Customers may select from the following options when you call. Please be prepared to provide your product serial number or agreement number.

- Option 1 - If You Know your Party's Extension
- Option 2 - Pricing and Product Information / Proposals and Quotations
- Option 3 - Technical Support
- Option 4 - Questions about an Existing Order
- Option 5 - Seminar Registration

#### **2. Consumer/Business Support 1-800-APL-CARE (1-800-275-2273)**

Provides complimentary telephone support when your product is within its 90-day complimentary support period or covered by an AppleCare Protection Plan. Otherwise, per incident support may be purchased. Representatives are available to assist you 7 days a week from 8am to 8pm CST. You may select from the following options when you call. Please be prepared to provide your product serial number or agreement number.

- Option 1 - Technical Support
- Option 2 - Automated Repair Status
- Option 3 - AppleCare Protection Plan Sales and Administration
- Option 4 - Find an Authorized Reseller or Service Provider

#### **3. Service Provider Support 1-877-576-2775**

Provides custom support for Apple Authorized Service Providers and Self-Servicing Customers with a valid service account number. Representatives are available to assist you Monday through Friday from 8am to 7pm CST. You may select from the following options when you call. Please be prepared to provide your service account number.

- Option 1 - Service Provider Administrative Support
- Option 2 - Technical Service Provider Support
- Option 3 - Dispatch Repairs or FIP Orders
- Option 4 - GSX Support

#### **4. Apple Customer Relations (800) 767-2775**

The team addresses moderately complex issues escalated by other support groups within Apple.

#### **5. Corporate Executive Relations (ER) (800) 767-2775**

The essential link between Apple customers and Apple's executive team, Public Relations, Investor Relations, Apple Legal, and the Senior Director of Customer Care in solving complex, sensitive issues.

## **EXHIBIT C - VALUE ADDED SERVICES**

Contact the Contractor for more details on these services and their related costs:

**A. Apple Customer Training/Apple Technical Training Products:**

Meet Your New Mac, Mac OS X Basics, Mac OS X and Your Daily Life, Getting Connected with Mac OS X, Digital Photography with iPhoto, Digital Movie Making with iMovie and iDVD, Digital Music with iTunes and iPod, Creating Presentations with Keynote, Mac OS X Help Desk Essentials, Mac OS X Server Essentials, System Administration of Mac OS X Clients, System Administration Using OS X Server, Apple Certified Helpdesk Specialist, Apple Certified Technical Coordinator, Apple Certified System Administrator, Self-paced Training, Leader-led Training

**B. Apple Professional Services:**

Advanced technical support and professional development, Experience in technology and education, Apple Professional Development and Technical Training, Apple Professional Development (APD) Fundamentals workshops, Leader-led Fundamentals workshop, Curriculum Mobile Labs workshops, Fundamentals online courses, Technology Integration Mentor Program, Apple Professional Development (APD) Integration workshops, Apple Professional Development (APD) Leadership, Apple Professional Development (APD) consulting services